

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ERIC E. HOYLE,

Plaintiff,

-vs-

08-CV-347-JTC

FREDERICK DIMOND, et al.,

Defendants.

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This matter was referred to the Hon. Jeremiah J. McCarthy for supervision of further proceedings. Defendants filed a motion to dismiss their counterclaims without prejudice pursuant to Fed. R. Civ. P. 41(c) (Item 125). The court previously granted in part the defendants' motion for summary judgment, dismissing plaintiff's complaint in its entirety, but denying the motion with respect to their counterclaims. As such, the only claims remaining for resolution at trial are the defendants' counterclaims.

By Order to Show Cause dated February 3, 2014, Magistrate Judge McCarthy directed the parties to show cause why the court should not invoke Fed. R. Civ. P. 54(b) to enter final judgment as to all claims which had previously been dismissed (Item 131). Plaintiff failed to respond to the Order to Show Cause and defendants submitted a memorandum of law agreeing to the proposal (Item 132). In a Report and Recommendation filed February 11, 2014, Magistrate Judge McCarthy recommended that, as there is no just reason for delay, the court should enter judgment pursuant to Rule 54(b) as to all claims and counterclaims except those which were not previously dismissed. In light of this recommendation, the defendants' motion to dismiss their counterclaims was denied as moot.

The court has carefully reviewed the Report and Recommendation, the record, and the materials submitted by the parties and, no objections to the Report and Recommendation having been timely filed, it is hereby

ORDERED that, pursuant to 28 U.S.C. § 636(b)(1), Magistrate Judge McCarthy's Report and Recommendation is adopted, final judgment is entered as to all claims not previously dismissed pursuant to Fed. R. Civ. P. 54(b), and defendants' motion to dismiss their counterclaims is denied as moot.

So ordered.

\_\_\_\_\_\s\ John T. Curtin\_\_\_\_\_  
JOHN T. CURTIN  
United States District Judge

Dated: March 19, 2014